109-229

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~941.~~ ~~626~~ ~~339~~ 83

MACON COUNTY COURT AND THE JUSTICES THEREOF, PLAINTIFFS IN ERROR,

vs.

ALFRED HUIDEKOPER, RELATOR.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF MISSOURI.

FILED OCTOBER 9, 1880.

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1 UNITED STATES OF AMERICA, *ss:*

The President of the United States, to the honorable the judges of the circuit court of the United States in and for the eastern division of the western district of Missouri, greeting:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court, before you, at the April term, 1880, thereof, between Alfred Huidekoper, relator, and Macon County court and the justices thereof, respondents, a manifest error hath happened, to the great damage of the said Macon County court and the justices thereof, as by their complaint appears: We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, D. C., on the second Monday of October next, in the said Supreme Court to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness, the honorable Morrison R. Waite, chief justice of the Supreme Court of the United States, this seventh day of July, in the year of our Lord one thousand eight hundred and eighty.

Issued at office in the city of Jefferson, with the seal of the circuit court of the United States for the eastern division of the western district of Missouri, dated as aforesaid.

[SEAL.] H. C. GEISBERG,
Clerk Circuit Court United States, Western District of Missouri.

Allowed by—

A. KREKEL, *Judge.*

2 (Indorsed): No. 1392, United States circuit court, eastern division, western district of Missouri. Alfred Huidekoper, rel., vs. Macon Co. court. Writ of error to the circuit court of the United States for the eastern division of the western district of Missouri.

Return to writ.

UNITED STATES OF AMERICA,
Eastern Division of the Western District of Missouri, ss:

In obedience to the command of the within writ, I herewith transmit to the Supreme Court of the United States a duly certified transcript of the record and proceedings in the within entitled case, together with all things concerning the same.

In witness whereof, I hereto subscribe my name and affix the seal of said circuit court, at the city of Jefferson, this 13th day of September, A. D. 1880.

[SEAL.] H. C. GEISBERG, *Clerk.*

3 The United States of America to Alfred Huidekoper, relator, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, D. C., on the second Monday of October next, pursuant to a writ of error, filed in

the clerk's office of the circuit court of the United States for the eastern division, western district of Missouri, wherein Macon County court and the justices thereof are plaintiffs in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Arnold Krekel, judge of the circuit court of the United States for the eastern division of the western district of Missouri, this seventh day of July, in the year of our Lord one thousand eight hundred and eighty.

A. KREKEL, *Judge.*

4 (Indorsed:) 1392. United States circuit court, eastern division, western district of Missouri. Alfred Huidekoper, rel., *vs.* Macon County court. Citation.

UNITED STATES OF AMERICA,
Western District of Missouri, ss:

I hereby acknowledge due service of the within citation, this 11th day of September, A. D. 1880.

JOSEPH SHIPPEN,
Attorney for Defendant in Error.

5 UNITED STATES OF AMERICA,
Eastern Division of the Western District of Missouri, set:

Pleas before the honorable circuit court of the United States in and for the eastern division of the western district of Missouri at the April term, A. D. 1880, in case of The United States, ex rel. Alfred Huidekoper, vs. Macon County court, No. 1392.

Be it remembered that heretofore, to wit, at an adjourned session of a regular stated term of said circuit court, begun and holden on the third Monday, the 17th day, of November, A. D. 1879, the following proceedings were had on the 18th day of March, A. D. 1880, in said case, to wit:

Information for mandamus filed.—Order for alternative writ.

ALFRED HUIDEKOPER, REL.,
vs.
MACON CIRCUIT COURT. } 1392.

This day there is received from Joseph Shippen, esq., attorney for relator, and presented to the court, an information for mandamus against the county court of Macon County and the justices thereof; on consideration whereof, it is ordered that an alternative writ of mandamus issue herein, returnable on the first day of the next term of this court against the county court of Macon County, commanding it to order the issue to relator of a warrant on the general funds of said county for the amount of the judgment in the information described, with interest and costs, and to pay the same according to law.

Said information for mandamus so presented as aforesaid is in the words and figures following, to wit:

Information for mandamus.

In the circuit court of the United States for eastern division of the western district of Missouri.

6 ALFRED HUIDEKOPER }
vs.
MACON COUNTY. }

To the honorable circuit court of the United States for the western district of Missouri, eastern division:

Your petitioner, Alfred Huidekoper, who is a citizen of the State of Pennsylvania, states that on the 19th day of November, 1879, he recovered in this court a judgment for twenty-eight thousand and thirty-three dollars and costs against Macon County, a municipal corporation created and existing under the laws of the State of Missouri, whose business and financial affairs are administered by a county court, composed of officers of said county, citizens of said State of Missouri; that said judgment was based upon coupons for interest detached from bonds issued by said county to the Missouri and Mississippi Railroad Company to aid in the construction of its railroad, pursuant to an act of the general assembly of the State of Missouri entitled "An act to incorporate the Missouri and Mississippi Railroad Company," approved February 20, 1865; that petitioner made demand upon the said county court of Macon County to order the issue to him of a warrant on the general funds of said county for the amount of said judgment, and cause the same to be issued, which demand was refused, as will appear by the order of said court, hereto appended and made part hereof. Wherefore, your petitioner, being without other remedy at law, prays this honorable court for a writ of mandamus directed to the said county court of Macon County, commanding it to order the issue to petitioner of a warrant on the general funds of said county, and cause the same to be issued forthwith for the amount of said judgment with interest and costs, or show cause at the next term of this court why they have not done so. And he will ever pray, &c.

ALFRED HUIDEKOPER,
By JOSEPH SHIPPEN, *Att'y.*

STATE OF MISSOURI,
City of St. Louis, ss:

Joseph Shippen, being duly sworn, says he is the attorney
7 for above petitioner, and the facts above stated are true.

JOSEPH SHIPPEN.

Sworn to and subscribed before me this 11th day of March, 1880.

C. M. WARD,
U. S. Commissioner, Eastern Dist. of Missouri.

Order.—Co. Court.

STATE OF MISSOURI,
County of Macon, ss:

I, Jas. G. Howe, cl'k of the county court, within and for the county and State aforesaid, certify that the following order was made by said court at the March term, 1880, thereof, to wit:

Order 4, Mar. 3d, 1880.

"Now comes Alfred Huidekoper, by his att'y, Joseph Shippen, and presents a demand on the court for a warrant on the general funds of the county, in payment of a judgment, obtained in the U. S. circuit court for the eastern div. of the western dist. of Missouri, for the sum of $28,032.00 vs. Macon County, on coupons detached from bonds issued to the M. & M. Railroad Company, which demand is hereby refused by the court. But it is hereby ordered that a warrant be drawn in favor of said Huidekoper, on the special M. & M. Railroad fund for the amount of said judgment and interest thereon to this date, amounting to $28,522.56."

In testimony whereof I hereunto set my hand and affix the seal of said court, at Macon, this 5th day of March, 1880.

[SEAL.] JAS. G. HOWE,
Clerk Macon Co. Court.

Afterwards there was issued out of the clerk's office of said circuit court, an alternative writ of mandamus, in the words and figures following, to wit:

Alternative writ of mandamus.

EASTERN DIVISION OF THE WESTERN DISTRICT OF MISSOURI, *set:*

The President of the United States of America, to the county court of Macon County and the justices thereof, greeting:

Whereas it has been represented to our circuit court of the United States in and for the eastern division of the western district of Missouri that Alfred Huidekoper is a citizen of the State of Pennsylvania,
8 and that the county of Macon is a municipal corporation, created and existing under the laws of the State of Missouri, whose business and financial affairs are administered by a county court, composed of officers of said county, citizens of said State of Missouri; that on the 19th day of November, 1879, said Alfred Huidekoper recovered a judgment against said Macon County for the sum of twenty-eight thousand and thirty-three dollars, and costs taxed at one hundred and seven dollars and twenty cents; that said judgment was based upon coupons for interest detached from bonds issued by said county to the Missouri and Mississippi Railroad Company to aid in the construction of its railroad, pursuant to an act of the general assembly of the State of Missouri, entitled "An act to incorporate the Missouri and Mississippi Railroad Company," approved February 20th, 1865; that demand has been made upon the said county court of Macon County to order the issue of a warrant on the general funds of said county for the amount of the above judgment, and cause the same to be issued, which demand was refused, and that the said relator is without other adequate remedy at law:

Now, therefore, you, the said county court of Macon County, and the justices thereof, are hereby commanded to order the issue of a warrant to the relator on the general funds of said county, and to cause the same to be forthwith issued for the amount of the above judgment, with interest at the rate of six per cent. per annum and costs, and also the costs of this proceeding as endorsed on this writ, or show cause on the

first day of the next term of our said court (April 19th, 1880) why you refuse so to do.

Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, the 15th day of March, A. D. eighteen hundred and eighty. Issued at office in the city of Jefferson in said district, under the seal of said circuit court, the day and year last aforesaid.

H. C. GEISBERG,
Clerk of said Court.

Upon said writ the United States marshal for said district made
9 the following return, to wit:

Marshal's return.

I hereby certify that I executed this writ of mandamus by leaving a writ, of which this is a duplicate, with each of the following-named justices of the county court of Macon Co., Mo., in person, namely, J. H. Osborn & Evans Wright, in the co. of Macon, on the 16th day of March, A. D. 1880, & further that I was unable to find Chas. R. Perry, the other justice of said court. All done in east. div. of the west. dist. of Mo.

C. C. ALLEN,
U. S. Mar.,
By C. C. CRIPPEN,
Dep'y.

And afterwards at a regular stated term of the circuit court of the United States in and for the eastern division of the western district of Missouri, begun and held on the third Monday, the 19th day of April, 1880, at Jefferson City, in said district and division, the following further proceedings were had on said last-mentioned day, to wit:

Return filed.

ALFRED HUIDEKOPER, REL.,
vs.
MACON CO. COURT. } 1392.

This day come the respondents, by Ben. E. Guthrie, esq., and file a return to the alternative writ of mandamus heretofore issued in the above cause.

Said return so filed as aforesaid is in the words and figures following, to wit:

Return to writ.

In the circuit court of the United States for the eastern division of the western district of Missouri. April term, 1880.

THE UNITED STATES, EX REL. ALFRED Huidekoper, plaintiff,
vs.
MACON COUNTY COURT AND THE JUDGES thereof, respondents.

Now at this day come the respondents, the judges of the county court of Macon County, Missouri, and for return to the alternative writ of

mandamus issued in the above-entitled cause, or so much thereof as they are advised that it is material for them to answer, and admit
10 that on the 19th day of November, 1879, Alfred Huidekoper, the relator, recovered judgment against Macon County, in the State of Missouri, for the sum of $28,033 and costs, which were taxed at $107.20.

That said judgment was based upon coupons for interest detached from bonds issued by said county to the Missouri and Mississippi Railroad Company to aid in the construction of its railroad, pursuant to an act of the general assembly of the State of Missouri entitled "An act to incorporate the Missouri and Mississippi Railroad Company," approved February 20th, 1865; that demand was made upon the said county court on the 3d day of March, 1880, to order the issue of a warrant on the general funds of said county for the amount of said judgment, and to cause the same to be issued, which demand was refused for the reasons hereinafter stated.

The respondents, for further return to said alternative writ of mandamus, state that under and by virtue of the act of the general assembly of the State of Missouri before mentioned, the corporation therein named on the day of September, 1866, organized under and accepted the provisions of said act, and thereby became a body politic and corporate under the name of the Missouri and Mississippi Railroad Company; that in and by said act said Missouri and Mississippi Railroad Company was authorized to locate and build a railroad from the town of Macon, in the county of Macon, in the State of Missouri, through the town of Edina, in the county of Knox, and thence to or near the northeast corner of the State of Missouri in the direction of Keokuk in Iowa, or Alexandria in Missouri, and from the town of Macon in a southwesterly direction to the Missouri River.

That at the time of Macon County making the subscription and issuing the bonds with interest and coupons to the Missouri and Mississippi Railroad Company, as hereinafter stated, Macon County court, under the constitution and general statutes of the State of Missouri, had no authority to make said subscription and issue said bonds and coupons without the assent of two-thirds of the qualified voters of Macon County, given at a regular or special election held in said county for the purpose
11 of obtaining said assent, except the authority which was conferred on it by the 13th section of the charter of the Missouri and Mississippi Railroad Company, which is as follows: "It shall be lawful for the corporate authorities of any city or town or county court of any county desiring so to do to subscribe to the capital stock of said company, and may issue bonds therefor and levy a tax to pay the same not to exceed one-twentieth of one per cent. upon the assessed value of the taxable property for each year."

That in and by the authority conferred upon Macon County court by said section alone, and by no other authority or power, Macon County court, on the 12th day of April, 1870, subscribed the sum of $175,000 on behalf of Macon County to the capital stock of the Missouri and Mississippi Railroad Company, and issued bonds in the sum of $1,000 each to it for the aggregate amount of $175,000, in payment of said subscription. Said bonds were dated the 2d day of May, 1870, with interest coupons attached at the rate of 8 per cent. per annum, payable semi-annually, and the bonds were payable twenty years after date. Interest and principal were both payable at the Bank of Commerce, in the city of New York.

That said subscription was made and said bonds and coupons were issued without the assent of two-thirds of the qualified voters of Macon

County, no election, regular or special, having been held in said county for the purpose of obtaining said assent; but on the contrary said subscription was made and said bonds and coupons issued by Macon County court against the wishes of nine-tenths of the qualified voters of Macon County.

That said judgment in favor of the relator was recovered on coupons detached from a portion of said bonds issued by Macon County in payment of said subscription to said Missouri and Mississippi Railroad Company, as aforesaid; and it is recited on the face of said bonds that they were issued under and pursuant to orders of the county court of Macon County, as authorized by said act of the general assembly of the State of Missouri, and the only part of said act which confers any authority upon Macon County court to make said subscription and issue said bonds and coupons is the 13th section thereof, which is hereinbefore recited.

That neither the county court of Macon County nor any
12 other officer or agent of Macon County had any authority to make said subscription or issue said bonds and coupons, except the authority which is conferred on Macon County court by said 13th section of said act.

That said subscription was made, said debt was made, and said bonds and coupons were issued by Macon County to said Missouri and Mississippi Railroad Company, as aforesaid, with express reference to payment only out of the money to be derived from the levy of a special tax of $\frac{1}{20}$ of one per cent. each year upon the assessed value of all the taxable property of Macon County.

That Macon County court at the time of making said subscription and issuing said bonds and coupons had no authority, and it has no authority now, to levy any other tax than said special tax of $\frac{1}{20}$ of one per cent. to pay said bonds and coupons.

That under and by virtue of the 13th section of said act, which is hereinbefore recited, the county court of Macon County has, each and every year since the issue of said bonds and coupons as aforesaid, levied a special tax of $\frac{1}{20}$ of one per cent. upon the assessed value of all the taxable property in said county, and caused the same to be extended on the tax-books of said county for each year, and had such special tax collected for the purpose of paying said bonds and coupons.

That the aggregate valuation of all the taxable property in Macon County always has been, and is now, less than six millions of dollars.

That the constitution of the State of Missouri limits the power of the county court of Macon County in levying taxes for county purposes as follows: "For county purposes, the annual rate on property in counties having six millions dollars or less shall not in the aggregate exceed 50 cts. on the $100 valuation."

That at the time of making said subscription and issuing said bonds and coupons, as hereinbefore stated, Macon County court was, ever since has been, and still is limited in levying taxes for county purposes by the 165th section of the 118th chapter of Wagner's Missouri statutes, as follows: "The several county courts are empowered to levy such sums as may be annually necessary to defray the expenses of their respective counties by a tax upon all property and licenses made
13 taxable by law for State purposes, * * * but the county tax in no case shall exceed ½ of one per cent. on the taxable property."

That in and by authority of said section, Macon County court has, each and every year since the making of said subscription and issuing said bonds and coupons as aforesaid, levied a tax of ½ of one per cent. upon all property and licenses made taxable by law, for State purposes,

for the purpose of annually defraying the expenses of carrying on and administering the government in Macon County.

That the money derived from the levy of said special tax of $\frac{1}{20}$ of one per cent. is inadequate to pay said bonds and coupons as they mature and fall due, and the money derived from said annual tax of $\frac{1}{2}$ of one per cent. is all annually absorbed in defraying the expenses of carrying on and administering the government in Macon County, although said money is administered with all the prudence and economy of which these respondents are capable.

That Macon County has no money in its treasury with which to pay the relator's judgment, if the warrant were drawn on the general funds therefor as commanded by said alternative writ of mandamus.

That judgments to the amount of $85,000 had been rendered against Macon County in this honorable court and in the circuit court of Macon County, prior to the rendition of relator's judgment, which still remain in full force unreversed and unsatisfied, and Macon County has neither money nor property with which to pay said judgments.

That these respondents, as judges of Macon County court, have no legal authority to levy any other or greater taxes than the taxes hereinbefore stated.

These respondents further state that they, as judges of Macon County court, are authorized and empowered by laws of the State of Missouri to audit, adjust, and settle all unadjusted and unsettled accounts against Macon County, and to which said county is a party, and to order the payment of any sum of money which may be found by these respondents as judges of Macon County to be due by Macon County, and to order a warrant to be drawn upon the treasurer thereof for the
14 amount so found due, to be paid out of the treasury of said county, and to order their clerk to draw and issue such warrant. But the statutes of the State of Missouri which were in force at the time said subscription was made and said bonds and coupons were issued to said Missouri and Mississippi Railroad Company as hereinbefore stated expressly required that each and every warrant which they were authorized to order to be drawn must express upon its face the particular fund out of which the treasurer of said county must pay said warrant, and said statutes which are now in force expressly require that each and every warrant express upon its face the particular fund out of which the treasurer must pay said warrant, and said treasurer is expressly prohibited by said statutes from paying such warrant out of any fund in the treasury other than the fund mentioned in said warrant, and it is expressly made a criminal offence by the statutes of said State for the county court of any county in said State or any member thereof to knowingly vote for the appropriation, disposition, or disbursement of any money belonging to any county other than the specific purpose for which the same was levied, assessed, collected, and appropriated.

That at the time of making said subscription and issuing said bonds and coupons, there were no such funds known to the laws and statutes of the State of Missouri as the funds described in said alternative writ of mandamus, to wit, "the general funds of said county," and there are no such funds now.

That if these respondents, as judges of Macon County court, were to draw or to order their clerk to draw a warrant in favor of the relator upon the treasurer of Macon County for the amount of this judgment, interest, and costs, payable out of the general funds of said county, as commanded by said alternative writ of mandamus, there is and legally there can be no such funds established, set apart, or appropriated for the payment of such warrant and out of which the treasurer of Macon

County would be authorized by law to pay such warrant, except the fund derived from the levy and collection of $\frac{1}{20}$ of one per cent., and a warrant in the form required in the writ of mandamus would not comply
15 with the requirements of the statutes of the State of Missouri in such cases made and provided.

That if these respondents were to draw or cause to be drawn a warrant in favor of relator in the form required by said writ, there is no fund, and, according to the statutes of the State of Missouri, there will be no fund in the treasury of Macon County out of which said warrant could be paid by the treasurer thereof, except the money derived from the levy and collection of $\frac{1}{2}$ of one per cent. which is required by the statutes of the State of Missouri to be annually levied, assessed, and collected for the express purpose of defraying the necessary expenses of carrying on and administering the government in Macon County, and the money derived from this tax is declared by said statutes to be held sacred for this purpose, and it is and would be a violation of said statutes to appropriate and divert it to the payment of the relator's judgment, interest, and costs, or to a warrant drawn in favor of the relator therefor, for the reason that said judgment is not an expense or debt incurred by Macon County in the administration of the government in said county.

That if a warrant should be drawn in favor of the relator as required by said writ, and the same should be paid out of the money derived from said last-mentioned tax, and the other judgments hereinbefore mentioned, which were recovered on similar bonds and coupons against Macon County, should be required to be paid out of said money in the order of the presentation of the warrants therefor, there would be no money left in the treasury of Macon County with which to defray the ordinary expenses thereof, and the result would be that it would operate a suspension and perhaps a disorganization of the government in Macon County.

That the respondents, as judges of Macon County court, have ever since the rendition of the judgment in favor of the relator been ready and willing to draw a warrant in favor of the relator for the full amount of his judgment, interest, and costs, upon the treasurer of Macon
16 County, to be paid out of the special fund derived from the levy and collection of said special tax of $\frac{1}{20}$ of one per cent., and on the 3d day of March, 1880, whilst in their capacity as the county court of Macon County, made an order, and had the same entered of record, that a warrant be drawn in favor of the relator for the amount of his judgment, interest, and costs to that date, to be paid out of the special fund, but the relator declined to accept a warrant so drawn.

These respondents, as judges of Macon County court, say they have no legal authority or power to draw a warrant on the treasurer of Macon County in favor of the relator, for the amount of his judgment, interest, and costs, upon the funds described in said writ, as therein commanded. And they say they have no legal authority or power to draw a warrant on the treasurer of Macon County in favor of the relator for the amount of said judgment, interest, and costs upon any other or different fund than said special fund derived from the levy and collection of said special tax of $\frac{1}{20}$ of one per cent.

These respondents say that the Missouri and Mississippi Railroad Company has never built any railroad through or into Macon County, and there is no prospect that it ever will, as it is hopelessly insolvent, and these respondents further say that Macon County has fully complied with and performed said contract between it and said Missouri and Mississippi Railroad Company, and the holders of its bonds as

for the purpose of annually defraying the expenses of carrying on and administering the government in Macon County.

That the money derived from the levy of said special tax of $\frac{1}{20}$ of one per cent. is inadequate to pay said bonds and coupons as they mature and fall due, and the money derived from said annual tax of $\frac{1}{2}$ of one per cent. is all annually absorbed in defraying the expenses of carrying on and administering the government in Macon County, although said money is administered with all the prudence and economy of which these respondents are capable.

That Macon County has no money in its treasury with which to pay the relator's judgment, if the warrant were drawn on the general funds therefor as commanded by said alternative writ of mandamus.

That judgments to the amount of $85,000 had been rendered against Macon County in this honorable court and in the circuit court of Macon County, prior to the rendition of relator's judgment, which still remain in full force unreversed and unsatisfied, and Macon County has neither money nor property with which to pay said judgments.

That these respondents, as judges of Macon County court, have no legal authority to levy any other or greater taxes than the taxes hereinbefore stated.

These respondents further state that they, as judges of Macon County court, are authorized and empowered by laws of the State of Missouri to audit, adjust, and settle all unadjusted and unsettled accounts against Macon County, and to which said county is a party, and to order the payment of any sum of money which may be found by these respondents as judges of Macon County to be due by Macon County, and to order a warrant to be drawn upon the treasurer thereof for the
14 amount so found due, to be paid out of the treasury of said county, and to order their clerk to draw and issue such warrant. But the statutes of the State of Missouri which were in force at the time said subscription was made and said bonds and coupons were issued to said Missouri and Mississippi Railroad Company as hereinbefore stated expressly required that each and every warrant which they were authorized to order to be drawn must express upon its face the particular fund out of which the treasurer of said county must pay said warrant, and said statutes which are now in force expressly require that each and every warrant express upon its face the particular fund out of which the treasurer must pay said warrant, and said treasurer is expressly prohibited by said statutes from paying such warrant out of any fund in the treasury other than the fund mentioned in said warrant, and it is expressly made a criminal offence by the statutes of said State for the county court of any county in said State or any member thereof to knowingly vote for the appropriation, disposition, or disbursement of any money belonging to any county other than the specific purpose for which the same was levied, assessed, collected, and appropriated.

That at the time of making said subscription and issuing said bonds and coupons, there were no such funds known to the laws and statutes of the State of Missouri as the funds described in said alternative writ of mandamus, to wit, "the general funds of said county," and there are no such funds now.

That if these respondents, as judges of Macon County court, were to draw or to order their clerk to draw a warrant in favor of the relator upon the treasurer of Macon County for the amount of this judgment, interest, and costs, payable out of the general funds of said county, as commanded by said alternative writ of mandamus, there is and legally there can be no such funds established, set apart, or appropriated for the payment of such warrant and out of which the treasurer of Macon

County would be authorized by law to pay such warrant, except the fund derived from the levy and collection of $\frac{1}{20}$ of one per cent., and a warrant in the form required in the writ of mandamus would not comply
15 with the requirements of the statutes of the State of Missouri in such cases made and provided.

That if these respondents were to draw or cause to be drawn a warrant in favor of relator in the form required by said writ, there is no fund, and, according to the statutes of the State of Missouri, there will be no fund in the treasury of Macon County out of which said warrant could be paid by the treasurer thereof, except the money derived from the levy and collection of $\frac{1}{2}$ of one per cent. which is required by the statutes of the State of Missouri to be annually levied, assessed, and collected for the express purpose of defraying the necessary expenses of carrying on and administering the government in Macon County, and the money derived from this tax is declared by said statutes to be held sacred for this purpose, and it is and would be a violation of said statutes to appropriate and divert it to the payment of the relator's judgment, interest, and costs, or to a warrant drawn in favor of the relator therefor, for the reason that said judgment is not an expense or debt incurred by Macon County in the administration of the government in said county.

That if a warrant should be drawn in favor of the relator as required by said writ, and the same should be paid out of the money derived from said last-mentioned tax, and the other judgments hereinbefore mentioned, which were recovered on similar bonds and coupons against Macon County, should be required to be paid out of said money in the order of the presentation of the warrants therefor, there would be no money left in the treasury of Macon County with which to defray the ordinary expenses thereof, and the result would be that it would operate a suspension and perhaps a disorganization of the government in Macon County.

That the respondents, as judges of Macon County court, have ever since the rendition of the judgment in favor of the relator been ready and willing to draw a warrant in favor of the relator for the full amount of his judgment, interest, and costs, upon the treasurer of Macon
16 County, to be paid out of the special fund derived from the levy and collection of said special tax of $\frac{1}{20}$ of one per cent., and on the 3d day of March, 1880, whilst in their capacity as the county court of Macon County, made an order, and had the same entered of record, that a warrant be drawn in favor of the relator for the amount of his judgment, interest, and costs to that date, to be paid out of the special fund, but the relator declined to accept a warrant so drawn.

These respondents, as judges of Macon County court, say they have no legal authority or power to draw a warrant on the treasurer of Macon County in favor of the relator, for the amount of his judgment, interest, and costs, upon the funds described in said writ, as therein commanded. And they say they have no legal authority or power to draw a warrant on the treasurer of Macon County in favor of the relator for the amount of said judgment, interest, and costs upon any other or different fund than said special fund derived from the levy and collection of said special tax of $\frac{1}{20}$ of one per cent.

These respondents say that the Missouri and Mississippi Railroad Company has never built any railroad through or into Macon County, and there is no prospect that it ever will, as it is hopelessly insolvent, and these respondents further say that Macon County has fully complied with and performed said contract between it and said Missouri and Mississippi Railroad Company, and the holders of its bonds as

aforesaid, including the relator, and they set up and plead the foregoing facts as the reasons why the judges of Macon County do not issue or order to be issued a warrant in favor of the relator on the general funds of said county as commanded by said alternative writ of mandamus. Wherefore, having made full return to said alternative writ of mandamus, and shown good, valid, legal reasons why they should not obey the command thereof, they ask to be discharged, with their costs incurred in making this return.

JOHN H. OSBORNE.
EVANS WRIGHT.
CHARLES R. PERRY.

17 James Carr, of counsel, and Ben. Eli Guthrie, pros. att'y, Macon Co.

STATE OF MISSOURI,
County of Macon:

This day personally appeared before the undersigned, clerk of the county court of Macon County, John H. Osborne, Evans Wright, and Chas. R. Perry, who, being by me first duly sworn according to law, depose and say that they have read the foregoing return, and that the matters and facts as therein stated are true according to the best of their knowledge and belief.

JOHN H. OSBORNE.
EVANS WRIGHT.
CHARLES R. PERRY.

Subscribed and sworn to before me this 14th day of April, A. D. 1880.

In testimony whereof I have hereunto subscribed my name and affixed the seal of said court.

[SEAL.]

JAS. G. HOWE,
Clerk Macon Co. Court.

And afterwards, at said last-mentioned regular stated term of said circuit, begun and held as aforesaid, the following further proceedings were had in said case on the 22d day of April, 1880, to wit:

Demurrer filed.

A. HUIDEKOPER, REL., *vs.* MACON CO. COURT. } 1392.

This day comes the relator, by Joseph Shippen, esq., and files a demurrer to the return of respondents to the alternative writ of mandamus herein.

And said demurrer so filed as aforesaid is in words and figures as follows, to wit:

Demurrer.

In the circuit court of the United States for the western district of Missouri, eastern division.

U. S., EX. REL., A. HUIDEKOPER, *vs.* MACON COUNTY COURT. } No. 1392.

18 Relator demurs to the respondent's return to the alternative writ of mandamus herein, and for grounds of demurrer shows that

said return does not state facts sufficient to constitute any defence or reason why the command of said writ should not be obeyed or why the peremptory writ should not be issued.

JOSEPH SHIPPEN,
Relator's Att'y.

And afterwards, at said last-mentioned regular stated term of said circuit court, begun and held as aforesaid, the following further proceedings were had on the 23d day of April:

Judgment.

A. HUIDEKOPER, REL., *vs.* MACON CO. COURT. } 1392.

This day comes the relator, by Joseph Shippen, esq., his attorney; thereupon the demurrer to the return of respondents to the alternative writ of mandamus is argued by said attorney and submitted; on consideration whereof, it is ordered that said demurrer be sustained. On further motion of said attorney, it is ordered that a peremptory writ of mandamus be issued, returnable on the first Monday in September next, directed to the county court of Macon County and the justices thereof, commanding them to order the issue of a warrant to said relator on the general funds of said county, and to cause the same to be forthwith issued for the amount of the judgment in the information described, with six per cent. interest per annum and costs.

And afterwards, on the 7th day of July, 1880, it being at an adjourned session of said last-mentioned regular stated term of said circuit court, the following further proceedings were had, to wit:

Supersedeas bond filed.

ALFRED HUIDEKOPER, REL., *vs.* MACON CO. COURT. } 1392.

This day there is presented to the court a writ of error to reverse the judgment in the above cause, a citation directed to the relator, and a supersedeas bond in the sum of one thousand dollars; whereupon said writ of error is allowed, said citation signed, and bond approved,
19 and ordered to be made part of the record herein. It is therefore ordered that all further proceedings in the above cause be stayed until the determination of said case in the Supreme Court of the United States.

Said bond so filed as aforesaid is in words and figures as follows, viz:

Supersedeas bond.

Know all men by these presents that we, J. H. Osborne, Evans Wright, C. R. Perry, B. F. Stone, J. O. Jewett, J. J. Long, W. M. Vancleve, J. F. Williams, J. M. Loudon, J. B. Melone, F. G. Sharp, J. Morrow, sr., are held and firmly bound unto Alfred Huidekoper in the full and just sum of one thousand dollars, to be paid to the said Alfred Huidekoper, his heirs, executors, administrators, or assigns; to which

payment well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents, sealed with our seals and dated this day of May, in the year of our Lord one thousand eight hundred and eighty.

Whereas, lately, at the April term, 1880, of the circuit court of the United States for the eastern division of the western district of Missouri, in a suit depending in said court between the United States ex rel. Alfred Huidekoper, plaintiff, and Macon County court, and the justices thereof, defendants, judgment was rendered against the said Macon County court and the justices thereof to order the issue of a warrant to the relator on the general funds of Macon County and to cause the same to be forthwith issued for the amount of the relator's judgment rendered against said county in said court on the 19th day of November, 1879, for $28,033 and the interest thereon and costs, and said defendants having obtained a writ of error of the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said Alfred Huidekoper, relator aforesaid, citing and admonishing him to be and appear at a Supreme Court of the United States, to be holden at Washington the second Monday of October next:

Now the condition of the above obligation is such that if the said Macon County court and the justices thereof shall prosecute said writ
20 of error to effect, and answer all damages and costs if they fail to make good their plea, then the above obligation to be void; else to remain in full force and virtue.

W. M. VANCLEVE.	[SEAL.]
JOHN F. WILLIAMS.	[SEAL.]
JNO. M. LOUDON.	[SEAL.]
J. B. MELONE.	[SEAL.]
T. G. SHARP.	[SEAL.]
J. MORROW, Sen.	[SEAL.]
JOHN H. OSBORNE.	[SEAL.]
EVANS WRIGHT.	[SEAL.]
CHARLES R. PERRY.	[SEAL.]
B. F. STONE.	[SEAL.]
J. O. JEWETT.	[SEAL.]
J. J. LONG.	[SEAL.]

Sealed and delivered in presence of—

Approved by—
(Signed) A. KREKEL, *Judge.*

STATE OF MISSOURI,
County of Macon, ss:

I, Jas. G. Howe, clerk of the county court, of Macon, Missouri, do hereby certify that I am acquainted with the obligors in the above obligation, and that they are solvent and respo'sible for a much larger amount than the sum named in said bond.

Witness my hand as clerk, and the seal of said county court, this eighth day of June, A. D. 1880.

[SEAL.] JAS. G. HOWE,
Clerk Macon Co. Court.

21 UNITED STATES OF AMERICA,
Western District of Missouri, Eastern Division, set:

I, Henry C. Geisberg, clerk of the circuit court of the United States n and for said district, do hereby certify that the foregoing writing is a

true transcript of the record and proceedings in case No. 1392 of Alfred Huidekoper, relator, vs. Macon County court, as fully as the same remain of record and on file in my office.

Witness my hand as clerk, and the seal of said court. Done at office in the city of Jefferson, this thirteenth day of September, 1880.

[SEAL.] H. C. GEISBERG, *Clerk.*

Indorsement on cover: No. 941. Macon County court and the justices thereof, plaintiffs in error vs. Alfred Huidekoper, relator. W. Missouri C. C. U. S. Filed 9th October, 1880.

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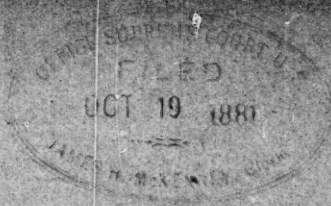

IN THE

Supreme Court of the United States.

No. 85 OCTOBER TERM, 1881.

MACON COUNTY COURT *and the Justices thereof, Plaintiffs in Error,*

vs.

ALFRED HUIDEKOPER, *Relator.*

In Error to the Circuit Court of the United States for the Western District of Missouri.

STATEMENT AND BRIEF FOR PLAINTIFFS IN ERROR.

JAMES CARR,
of Counsel for Plaintiffs in Error.

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SUPREME COURT U.S.
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IN THE

Supreme Court of the United States.

No 82 OCTOBER TERM, 1881.

MACON COUNTY COURT *and the Justices thereof, Plaintiffs in Error,*

vs.

ALFRED HUIDEKOPER, *Relator.*

In Error to the Circuit Court of the United States for the Western District of Missouri.

STATEMENT AND BRIEF FOR PLAINTIFFS IN ERROR.

JAMES CARR,
of Counsel for Plaintiffs in Error.

IN THE

Supreme Court of the United States.

No..... OCTOBER TERM, 1881.

MACON COUNTY COURT *and the Justices thereof, Plaintiffs in Error,*

vs.

ALFRED HUIDEKOPER, *Relator.*

In Error to the Circuit Court of the United States for the Western District of Missouri.

STATEMENT OF THE CASE.

On the 18th day of March, 1880, the relator filed an information in the court below in which he alleged, that on the 19th day of November, 1879, he recovered judgment against Macon County, Missouri, for the sum of $28,033 and costs, on coupons detached from bonds issued by said county to the Missouri and Mississippi Railroad Company, to aid in the construction of its railroad, pursuant to an act of the General Assembly of the State of Missouri, entitled "An act to incorporate the Missouri and Mississippi

Railroad Company," approved February 20, 1865. That he had made demand upon the plaintiffs in error to issue to him a *warrant on the general funds of said county* for the amount of said judgment, and cause the same to be issued, which demand was refused. The relator prayed for a writ of mandamus, commanding the plaintiffs in error to order the issue of a warrant on the general funds of said county, and to cause the same to be issued forthwith for the amount of said judgment, interest and costs. An alternative writ of mandamus was issued as prayed for. On the 19th day of April following the plaintiffs in error made their return to said writ. In it they admitted the facts stated in said information, and for cause showed in substance the following:

That the Macon County Court had no authority, under the Constitution and Statutes of the State of Missouri, to subscribe to the capital stock of the Missouri and Mississippi Railroad Company, without the assent of two-thirds of the qualified voters of Macon County, given at a regular or special election held for the purpose of obtaining said assent; and no such assent was given. That the only authority which Macon County Court had for subscribing to the capital stock of said company was conferred by the 13th section of the charter of said company, which is as follows;

"It shall be lawful for the corporate authorities of any city or town, or county court of any county desiring so to do, to subscribe to the capital stock of said company, and may issue bonds therefor and levy a tax to pay the same, not to exceed one-twentieth of one per cent. upon the assessed value of the taxable property for each year."

That in and by the authority conferred upon Macon County Court by said section alone, it, on the 12th day of April, 1870, subscribed the sum of $175,000 on behalf of Macon County to the capital stock of the Missouri and Mississippi Railroad Company, and issued bonds for that amount in payment of said subscription.

That relator's judgment was recovered on coupons detached from a portion of said bonds, and it is recited on the face of said bonds that they were issued under and pursuant to orders of the County Court of Macon County, as authorized by said act of the General Assembly of the State of Missouri.

That said subscription and debt were made, and said bonds and coupons were issued by Macon County to said Missouri and Mississippi Railroad Company, with express reference to payment only out of the money to be derived from the levy of a special tax of one-twentieth of one per cent. each year upon the assessed value of all the taxable property of Macon County. That at the time that said subscription was made and said bonds and coupons were issued, Macon County Court had no authority, and it has no authority now, to levy any other tax than said special tax of one-twentieth of one per cent. to pay said bonds and coupons.

That Macon County Court has, each and every year since the issue of said bonds and coupons, levied a special tax of one-twentieth of one per cent. upon the assessed value of all taxable property in said county, and caused the same to be extended on the tax books of said county for each year, and had such special tax collected for the purpose of paying said bonds and coupons.

That at the time that said subscription was made and said bonds and coupons were issued, Macon County Court was, and still is, limited in the levy of a tax to one-half of one per cent. in each year to pay the current expenses for carrying on and administering the government in Macon County. That the money derived from the levy of said tax is annually absorbed in this way, although said money is administered with all the prudence and economy of which the plaintiffs in error are capable. That said special tax of one-twentieth of one per cent. is inadequate to pay said bonds and coupons; and Macon County has neither money nor property with which to pay the relator's judg-

ment and other judgments to the amount of $85,000 on similar bonds and coupons.

That the plaintiffs in error have no legal authority to levy any other or greater taxes than said special tax of one-twentieth of one per cent. and said ordinary revenue tax of one-half of one per cent.

That at the time that said subscription was made and said bonds and coupons were issued, the statutes of the State of Missouri expressly required, and they still require, that each and every warrant which they were authorized to order to be drawn must express upon its face the *particular fund* out of which the treasurer of the county must pay such warrant; and said treasurer is expressly prohibited by said statutes from paying such warrant out of any fund in the treasury other than *the fund* mentioned in such warrant. And it is expressly made a criminal offense by the same statutes for the county court of any county or any member thereof to knowingly vote for the appropriation, disposition or disbursement of any money belonging to any county for any other than the *specific* purpose for which the same was levied, assessed, collected and appropriated.

That at the time of making said subscription and issuing said bonds and coupons, there were no such funds known to the laws and statutes of the State of Missouri as the funds described in said alternative writ of mandamus, to-wit, "the general funds of said county," and there are no such funds now; and legally there can be no such funds established, set apart or appropriated for the payment of such warrant, and the treasurer would not be authorized by law to pay the same if drawn upon him in the form commanded by said writ.

That said tax of one-half of one per cent. is annually levied, assessed and collected for the express purpose of defraying the necessary expenses of carrying on and administering the government in Macon County, and the money derived from this tax is declared by said statutes *to be held sacred for this purpose*; and it is, and would be a

violation of said statutes to appropriate and divert it to the payment of the relator's judgment, interest and costs, or to a warrant drawn in favor of the relator therefor, for the reason that said judgment is not an expense or debt incurred by Macon County in the administration of the government in said county.

That if a warrant should be drawn in favor of the relator, as required by said writ, and the same should be paid out of the money derived from said last mentioned tax, and said other judgments recovered on similar bonds and coupons against Macon County, should be required to be paid out of said money in the order of the presentation of the warrants therefor, there would be no money left in the treasury of Macon County with which to defray the ordinary expenses thereof, and the result would be that it would operate a suspension and perhaps a disorganization of the government in Macon County.

Plaintiffs in error have at all times since the renditiou of the judgment in favor of the relator been ready and willing, and on the 3d day of Maren, 1880, they offered to draw a warrant in favor of the relator for the full amount of his judgment, interest and costs, upon the treasurer of Macon County, to be paid out of the special fund derived from said special tax of one-twentieth of one per cent.; but the relator declined to accept a warrant so drawn. And they say that they have no power or authority to draw a warrant on the treasurer of Macon County in favor of the relator for the amount of his judgment, interest and costs upon any other or different fund than said special fund derived from the levy and collection of said special tax of one-twentieth of one per cent.; and that Macon County has fully complied with and performed said contract between it and said Missouri and Mississippi Railroad Company, and the holders of its bonds issued to said company as aforesaid.

To this return the relator demurred, on the ground that it does not state facts sufficient to constitute any defense or

reason why the command of said writ should not be obeyed. The court sustained the demurrer, and ordered a peremptory writ of mandamus be issued, commanding the County Court of Macon County "to order the issue of a warrant to the relator *on the general funds of said county*, and to cause the same to be forthwith issued for the amount of the judgment in the information described." Thereupon the plaintiffs in error sued out a writ of error to this court.

ASSIGNMENT OF ERRORS.

On the record in this case the County Court of Macon County assigns the following errors:

1. The court below erred in sustaining the relator's demurrer to the return made by the plaintiffs in error.

2. The court below erred in issuing a peremptory writ of mandamus, commanding the County Court of Macon County "to order the issue of a warrant to said relator *on the general funds of said county*, and to cause the same to be forthwith issued, for the amount of the judgment in the information described."

3. The money derived from the levy, assessment and collection of the tax of one-half of one per cent. is a *trust fund* to pay the current expenses of carrying on and administering the government in Macon County, and as such, the relator is not entitled to have a warrant drawn on it for the payment of his judgment, as it is not a debt incurred in the administration of the government.

BRIEF.

The principal questions presented by the record in this case are:

First. Is the relator entitled to have a warrant at all drawn "*on the general funds* of Macon County" for the amount of his judgment, interest and costs? *Second*. If it shall be held that he is so entitled, then, whether the order commanding it to be drawn should not be so modified that

the warrant be so drawn, that the treasurer would not be required to pay it, or any part of it *out of the ordinary revenues of the county*, until the current expenses of carrying on and administering the government in the county should have first been fully paid out of said revenues, and if there should be any remainder, that it only should be applied to the payment of such warrant?

I. The County of Macon is presented by the record in this case in a two-fold relation. The one is in its *public* character as a municipal corporation, created, organized and maintained as an agency of the government of the State of Missouri *pro bono publico*. The other is in its character as a mere *private* corporation, authorized by the charter of the Missouri and Mississippi Railroad Company to take and hold stock, like an individual, in the capital stock of said company. The duties and obligations imposed upon it in the former character are a *trust*, and under all circumstances are paramount to its duties and obligations in its latter character. All property and revenues held by it in its public character, are held as a trust, and it is simply a trustee; and no creditor whose debt has been contracted by it in its character of a *private* corporation can legally levy on, sequestrate or appropriate such property or revenues to the payment of his debt. Otherwise, it might go into private speculations on its own account, and they might prove disastrous; and if its private creditors could resort to the property and revenues held by it in trust for public purposes, the county not only might, but would become so crippled and paralyzed, sooner or later, that it would be utterly incapable of discharging the duties and obligations to the public for which it was created and organized. *Salus populi suprema lex esto.*

Meriwether v. Garrett, 102 U. S. 472.
United States v. Union Pacific R. R. Co., 98 Id. 570.
Sinking Fund Cases, 99 Id., on p. 724.
Tucker v. Ferguson, 22 Wall., on p. 572.
Broughton v. Pensacola, 93 U. S. 266.

II.—1. Counties are political divisions of the State, and county courts are agents of the State established for *public* and *governmental* purposes.

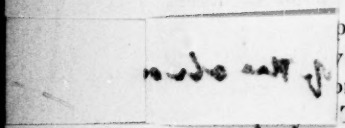
State v. Macon County Court, 68 Mo. 29.
Reardon v. St. Louis County, 34 Id. 561.
St. Louis, etc. v. St. Louis County Court, 34 Id. 546.
Steines v. Franklin County, 48 Id. 188.
Ray County v. Bentley & Barr, 49 Id. 236.

2. Subscribing to the capital stock of a railroad company is not one of the purposes for which government is established.

Loan Association v. Topeka, 20 Wall. 555.
Hanson v. Vernon, 27 Iowa, 28.
Whiting v. Sheboygan, etc. R. R. Co., 25 Wis. 167.

3. The subscription in question was made by a faithless County Court against the wishes of nine-tenths of the qualified voters of Macon County, the assent of said voters not having been obtained, as required by the Constitution and general statutes of the State. Hence the relator has no rights except those conferred by the 13th section of the charter of the Missouri and Mississippi Railroad Company.

Carpenter v. Lathrop, 51 Mo. 467.
State v. Garroutte, 67 Id. 445.
Leavenworth, etc. R. R. Co. v. Platte Co. Court, 42 Id. 171.
Supervisors v. United States, 18 Wall. 71.



ption was made and the bonds and coupons
y and exclusively under and by authority
on of the Missouri and Mississippi Rail-
The whole contract between the County of Macon and the Railroad Company and the holders of the bonds and coupons issued to it, is contained in that section. It authorizes the issuing of the bonds, and it provides a specific fund for their payment, *i. e.*, the fund to

be derived from the levy and collection of the special tax of one-twentieth of one per cent. The provision of this fund excludes the right to proceed against any other fund. *Expressio unius est exclusio alterius.*

Lindell v. H. & St. Jo. N. C. Co., 36 Mo. 343.

Leary v. Same, 38 Id. 485.

5. This subscription was made and the bonds and coupons were issued by Macon County in its character as a *private* corporation, and not in its *public* character as a division and agency of the State government. Hence, the relator has no legal nor moral right to ignore the contract under which his bonds and coupons were issued, and resort to the *ordinary revenue fund* of Macon County, which has been expressly created and established under the laws of the State for the purpose of carrying on and administering the government in Macon County. If he were permitted to do so, it would be a monstrous diversion and perversion of a trust fund belonging to the State, although managed and controlled by the County Court of Macon County under and by authority of the statutes of the State.

Broughton v. Pensacola, 93 U. S. 266.

Merriwether v. Garrett, 102 Id. 472.

III.—1. The law enters into and becomes a part of the contract as fully to all intents and purposes, as if it were copied into it *in hæc verba*.

State v. Macon County Court, 68 Mo. 29.

State v. Shortridge, 56 Id 126.

Van Hoffman v. City of Quincy, 4 Wall. 554.

Hawthorn v. Calef, 2 Id. 10.

2. This court follows the decisions of the highest court of a State, construing its own Constitution and Statutes.

Supervisors v. United States, 18 Wall. 71.

Bailey v. Maguire, 22 Id. 216.

Leffingwell v. Warren, 2 Black, 599.

Green v. Neal, 6 Pet. 291.

United States v. Morrison, 4 Id. 124.

3. The Supreme Court of Missouri has construed the 13th section of the charter of the Missouri and Mississippi Railroad Company, and it has decided that a judgment creditor, whose judgment has been obtained on bonds and coupons issued by Macon County to the Missouri and Mississippi Railroad Company, under and by authority of said section is not entitled to have a warrant drawn on the ordinary revenue fund of the county for the amount of such judgment.

State v. Macon County Court, 68 Mo. 29.
State v. Shortridge, 56 Id. 126.

4. The relator's debt was contracted with express reference to payment only out of the money derived from the levy and collection of the special tax of one-twentieth of one per cent. Where this is the case the creditor has no right to resort to any other fund, although the fund with reference to which the debt was contracted, turns out to be inadequate to pay the debt. Such is the uniform construction of the statutes of the State given by the Supreme Court of Missouri to debts contracted by counties, when acting strictly and purely in their public character for *governmental* purposes. *A fortiori*, then, should a creditor of a county whose debt had been contracted by it in its character as a *private* corporation with express reference to payment out of a *specific* fund, created, set apart and appropriated expressly for the payment of such debt, not be allowed to have a warrant drawn upon the *ordinary revenue* fund of such county.

Pettis County v. Kingsbury, 17 Mo. 479.
Kingsbury's Executors v. Pettis County, 48 Id. 208.
State v. Bollinger County Court, 48 Id. 473.
Campbell v. Polk County, 49 Id. 214.
State v. Macon County Court, 68 Id. 29.
Cook v. Putnam County, 70 Id. 668.

The attention of this court was not called to the foregoing decisions of the Supreme Court of Missouri, when the

case of the United States v. Clark County (96 U. S. 211), was before it for decision. Now, as the construction contended for is not new, but was settled in the case of Pettis County v. Kingsbury, *supra*, by the Supreme Court of Missouri a quarter of a century before the decision by this court in the Clark County case, and that construction has ever since been uniformly followed by the Supreme Court of Missouri, this court will follow this construction even in a case where it has previously given a different construction.

Supervisors v. Uuited States, 18 Wall. 81.

IV.—1. The rights of the government are always paramount to those of the citizen. He holds his life, his liberty, his property—everything that he has—subordinate to these paramount rights. Government must live regardless of the hardship upon the citizen in maintaining the life of the government. It is upon this principle that the citizen is *drafted* into the military service of government; that senators and representatives are privileged from arrest in all cases, except treason, felony and breach of the peace; that the salary of a public officer is not subject to garnishment; that the salary of a United States officer cannot be taxed by a State of which he is a citizen; and *e converso*, the salary of an officer of a State cannot be taxed by the United States.

§ 6, Art. I, Constitution of United States.
§ 16, Art. IV., Constitution of Missouri.
The Collector v. Day, 11 Wall. 113.
Dobbins v. Com'rs. of Erie County, 16 Pet. 435.
Hawthorn v. St. Louis, 11 Mo. 59.
Fortune v. Same, 23 Id. 239.
Erie v. Knapp, 29 Pa. St. 173.
Schaffer v. Cadwallader, 36 Id. 126.
1 Dillon Municipal Corp., §§ 64, 65, and 2 Id. § 446.
§ 10, p. 604, Wagner's Mo. Stats.
§ 3, p. 664, Ibid.

2. The government was a privileged creditor under the Roman law, and it has been under the government of every nation since the downfall of the Roman empire. The United States government and the government of the State of Missouri are entitled to *priority* in the payment of debts.

1 Kent, p. 269 (10th ed.)
Rev. Stats. U. S., § 5101, p. 988.
Wagner's Mo. Stats., § 1, p. 191.

3. The current expenses incurred by a county in its public capacity in carrying on and administering the government must first be paid, before a judgment creditor whose judgment was obtained for a debt incurred by the county in its character of a *private* corporation.

Coy v. City of Lyons, 17 Iowa, 1.
Coffin v. City of Davenport, 26 Id. 515.
Grant v. City of Davenport, 36 Id. 396.
Com. v. Com'rs. of Lancaster County, 6 Binney, 5.
Same v. Com'rs. of Philadelphia County, 1 Wharton, 1.
Same v. Same, 2 Id. 286.

V.—There is no such fund, either *de jure* or *de facto*, known to the statutes of Missouri as "the general funds" of Macon County. The return shows this to be the case, and it is admitted by the demurrer. The peremptory writ commanded the plaintiffs in error to draw a warrant upon a fund which had no existence. The law does not require a court to do a fruitless act.

High on Extraordinary Legal Remedies, § 352.
§§ 28, 32, p. 414, Wagners's Stats.

The treasurer is prohibited from disbursing any money in his hands, except on warrants *legally* drawn on him by order of the County Court; and said warrants must be paid "in the order presented," "when there shall be money in the treasury *belonging to the fund drawn upon*,

sufficient to pay such prior warrants and any such warrant so presented."

§§ 7, 8 and 9, pp. 410, 411, Ibid.

A penalty and forfeiture of office are inflicted on the treasurer for disobedience.

§ 18, p. 412, Ibid.

The treasurer would either have to disregard a warrant drawn on "the general funds" of the county, on the ground that there are no such funds, and subject himself, if he should be mistaken, to penalty and forfeiture of office if the holder of the warrant should push him to the extent of the law; or if he treated it as drawn on the *ordinary revenue fund* of the county, then he would have to pay it "in the order presented," and the result would be that it would take all the money in the treasury which had been levied, assessed and collected for the express purpose of defraying the expenses incurred in carrying on and administering the government in the county; and the government would, for want of money, become suspended, paralyzed, and sooner or later inevitably disorganized. The plaintiffs in error, as Judges of Macon County Court, have no power or authority to levy any other taxes than the special tax of one-twentieth of one per cent. under the charter of the Missouri and Mississippi Railroad Company, and the ordinary revenue tax of one-half of one per cent. for defraying the expenses of carrying on and administering the government in Macon County. The latter is a *trust* fund, and is all consumed in the administration of the trust. The relator has no claim on *it* by virtue of his contract with Macon County. He has no legal right to divert and pervert this trust fund to the payment of his debt. It does not come within the terms of the trust. Moreover, the statutes of Missouri make it a criminal offense to divert the ordinary revenues of the county from their legitimate purpose, and pervert them to another and different purpose.

Session Acts 1874, § 1, p. 45.

State v. Garroutte, 67 Mo. 456.

The Supreme Court of Missouri has twice decided that the County Court has no authority to levy any other or greater taxes than those mentioned, and those decisions have twice been followed by this court.

State v. Shortridge, 56 Mo. 126.
State v. Macon County Court, 68 Id. 29.
United States v. County of Clark, 95 U. S. 769.
United States v. County of Macon, 99 Id. 582.

To require a warrant to be drawn in favor of the relator for the amount of his judgment upon the ordinary revenue fund of Macon County—*a fund held in trust* for the State of Missouri, or even, in the language of the peremptory writ of mandamus in this case, "upon the general funds of said county," would be not to enforce the law but to break it! It would be to break down all the bulwarks established by the State in its Constitution and laws for the protection of the State government. "The State is dependent upon the machinery of its county governments for the assessment and collection of taxes for its support, and the payment of its debt. We cannot so exercise our discretion as to direct the issuance of a writ in this case and thus establish a principle tending to overthrow the county governments, and thus to impair the power of the State to maintain itself."

State v. Macon County Court, *supra*.

The return shows that Macon County has neither money nor property held in its own proprietary right with which it could pay the relator's judgment. (P. 8 of transcript.) And if a warrant should be drawn as required by said writ, and paid out of the ordinary revenue fund of the county in the order of the presentation of such warrant, there would be no money left in the treasury of Macon County with which to defray the ordinary expenses of carrying on and administering the government in Macon County, and

"the result would be that it would operate a suspension, and, perhaps, a disorganization of the government in Macon County." (P. 9 of transcript.)

These facts are all admitted by the demurrer filed by the relator. Is this court going to affirm a judgment which would produce such anarchical consequences? It would be at variance with every decision and every utterance ever made by this court from the organization of the government down to date, unless the decision of the majority of this court in the Clark County case is to be understood and applied as it was by the court below in this case. If that decision is to be so understood and applied, then, I have no hesitation in saying, with all due respect, that it is erroneous and should be overruled.

The court below entirely ignored the *facts* stated in this return which were not stated in the return in the Clark County case at all. The case now presented is so entirely different from the case then presented, that the Clark County case should not be applied as a precedent to rule this case.

The statute of Missouri requires the assessor of the county to make out and return to the county court on or before the 20th of January in each year a fair copy of the assessor's book. This book shows the *aggregate valuation* of all the taxable property in the county; and the same statute requires the clerk of the county court immediately to make out an abstract of the assessment book, showing the same thing, and forward the same to the State Auditor at the State capital.

§ 61, p. 1170 Wagner's Stats.

Thus the aggregate valuation of all the taxable property of Macon County could have been ascertained by the purchasers of the bonds in question, by simply examining the records in the county clerk's office of Macon County, or doing the same thing in the State Auditor's office at the State capital. Then, by making a small mathematical calculation they could have ascertained to the cent the amount

of money which could be realized from the levy and collection of the special tax of one-twentieth of one per cent. on this aggregate valuation. This is the only fund which Macon County had or could have applicable to the payment of these bonds and coupons. In contracting this debt Macon County did it in its character as a *private* corporation, and if it had, in the language of Mr. Justice Field in Meriwether v. Garrett, *supra*, either money or property "*in its own right for profit or as a source of revenue, not charged with any public trust or use, and funds in its possession not appropriated to any specific purpose*," then it is admitted that such money or property would be applicable to the payment of the debt in question. But the return shows that it has neither. The debt is a legal debt. The obligation remains unimpaired. *But the debtor is insolvent.* Macon County is unable to pay it. It stands in the category of any other private corporation which has contracted a legal debt which it is unable to pay. After having appropriated all its assets to the payment of its debts, it can do no more. The creditor is at the end of his rope. He has no right to have funds, held *in trust* by the debtor, appropriated to the payment of his debt. This is precisely what is sought to be done by the relator in this case.

Viewed in any aspect in which the return in this case presents it, the judgment of the court below is erroneous, and it should be reversed and the plaintiffs in error discharged.

JAMES CARR,
of Counsel for Plaintiffs in Error.

104-229

SUPREME COURT, U.S.
FILED
OCT 25 1883
A. L. KENNEY, CLERK

Supreme Court of the United States.

OCTOBER TERM, 1883

No. 83

THE COUNTY COURT OF MACON COUNTY,
PLAINTIFF IN ERROR,

vs.

UNITED STATES *ex rel.* ALFRED HUIDEKOPER.

In Error to the Circuit Court of the United States for the Eastern Division of the Western District of Missouri.

BRIEF OF DEFENDANT IN ERROR.

JOSEPH SHIPPEN,
Attorney for Defendant in Error.

JUDD & DETWEILER, PRINTERS.

Supreme Court of the United States.

OCTOBER TERM, 1881.

No. 626.

THE COUNTY COURT OF MACON COUNTY,
PLAINTIFF IN ERROR.

vs.

UNITED STATES *ex rel.* ALFRED HUIDEKOPER.

In Error to the Circuit Court of the United States for the Eastern Division of the Western District of Missouri.

BRIEF OF DEFENDANT IN ERROR.

Statement.

The General Assembly of the State of Missouri passed an act entitled "An act to incorporate the Missouri and Mississippi Railroad Company," approved February 20, 1865, a full copy whereof is hereto appended.

It was therein enacted by—

"SEC. 13. It shall be lawful for the corporate authorities of any city or town, the county court of any county desiring so to do, to subscribe to the capital stock of said company, and may issue bonds therefor, and levy a tax to pay the same, not to exceed one-twentieth of one per cent. upon the assessed value of taxable property for each year."

Macon County, under this authority, subscribed for stock

in said company and issued in payment thereof is negotiable bonds, a copy of one of which is hereto appended.

Alfred Huidekoper, defendant in error, as purchaser and holder of said bonds recovered a general judgment against said county upon matured interest coupons detached therefrom. This judgment remaining unpaid he instituted proceedings in mandamus to compel the county court of Macon County to issue and deliver to him a general warrant upon the Treasurer of said county for the amount thereof. To the alternative writ granted by the court commanding the said county court to issue such general warrant or show cause why it refused so to do, return was made, whereby the respondent attempted to show cause for refusal. The relator demurred to this return, on the ground of the insufficiency of the facts therein stated to constitute any reason in law for refusal to obey the command of the writ. The court below sustained this demurrer, and ordered the peremptory writ to be issued. The respondent thereupon sued out this writ of error to reverse said judgment.

The question, therefore, presented by this record is, whether the court below erred in holding the respondent's return to be insufficient and ordering the peremptory writ of mandamus requiring the county court of Macon County to issue to relator a general warrant on the Treasurer of said county for the amount of the judgment.

The return, which is contained *in extenso* in the record, is repeated in substance in respondent's brief. It is a long and argumentative jumble of law and facts, for the most part irrelevant and immaterial, with conclusions no doubt eminently satisfactory to the people of Macon County. The gist of the whole document is, however, as to the said section 13 of the railroad charter under which the bonds were issued. It contains no facts, as the defendant in error contends that the Court below decided sufficient to excuse the respondents from obedience under the law as laid down by

the two authoritative decisions, involving the same question upon the same charter, rendered by this Court.

U. S. *ex rel.* Johnson *vs.* Clark County Court, 96 U. S., 211.

Macon County Court *vs.* U. S. *ex rel.*, Huidekoper, 99 U. S. 592

Brief.

Section 13 of the Missouri and Mississippi Railroad Company's charter has been the subject of no less than *seven* decisions in suits of mandamus, by this Court and the Supreme Court of Missouri. The immediate question presented by the record in this case has been already *twice* expressly decided by this Court. It was in reliance on these decisions that this mandamus proceeding was instituted, and the judgment below was rendered by the Circuit Court upon them as authoritative precedents.

Nevertheless, the plaintiff in error, without attempting to distinguish this case from those preceding it on the same question, treats the whole subject as open for debate and reconsideration *de novo* by this Court as at present constituted. The defendant in error accepts the law as settled, contenting himself with showing that this case falls within those former express adjudications of the same point, and relying on the maxims—

Stare decisis.
Res adjudicata pro veritate accipitur.
Interest reipublicæ ut vit finis litium.

Said seven decisions were rendered chronologically in the following order:

(1) State *ex rel.*, &c., *vs.* Macon County, 41 Mo., 453, (1867.)

(2) Aull *vs.* Shortridge, 56 Mo., 126, (1874.)

(3) United States *vs.* Clark County Court, 95 U. S., 769, ~~(1876.)~~ 1878

(4) United States *vs.* Clark County Court, 96 U. S., 211, ~~(1876.)~~ 1878

(5) State *ex rel.* Watkins *vs.* Walker, 68 Mo., 29, (1878.)

(6) U. S. *ex rel.* Huidekoper *vs.* Macon County Court, 99 U. S., 582, (1879.)

(7) Macon County Court *vs.* U. S. *ex rel.*, Huidekoper, 99 U. S., (1879.)

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The first, and leading case, State *ex rel.* Missouri and Mississippi Railroad Company *vs.* Macon County Court, 41 Mo., 453, (1867,) which has been pronounced to be probably the most important decision ever rendered in Missouri, was a proceeding in mandamus by the Railroad Company to compel Macon County to issue the bonds now still involved in controversy.

Therein the Supreme Court of Missouri ordered peremptorily the bonds to be issued in pursuance of the authority granted by said charter.

The second case, Aull *vs.* Shortridge, 56 Mo., 126, (1874,) was also a proceeding in mandamus against the Macon County Court, but this was to compel payment of the same bonds after they had been issued and sold. Therein the Supreme Court of Missouri passed on the rights of the creditor.

The third case, United States *ex rel.* Johnson *vs.* Clark County Court, 95 U. S., 769, (1876,) was a proceeding in mandamus to compel the levy of taxes for back years when the power had not been exercised—to pay a judgment recovered on interest coupons from Clark County bonds issued under the said charter. Therein this Court held that the peremptory writ was properly refused.

The fourth case, United States *ex rel.* Johnson *vs.* Clark Count Court, 96 U. S., 211, (1878) was a proceeding likewise in mandamus by the same relator against the same respondent, relative to the same judgment as in the last case to compel the issue of a general warrant upon the Treasurer of Clark County for the amount of the relator's judgment. To the return to the alternative writ, a demurrer was interposed by the relator, which was overruled by the Circuit Court. These two Clark County cases were presented together in 1878 distinguished counsel (Hon. George W. McCreary and others) appearing for Clark County. Therein, it was decided in passing on the limitation of one twentieth of one per cent. tax in section 13—(Strong, J., delivered the opinion)—

"That was a special tax *distinct from and in addition* to the ordinary tax, which, by other statutes, the county court was authorized to levy.

"To provide a particular fund as additional security for the payment of a debt.

"An additional provision made for the payment of the new debt authorized.

"Probably the tax of one-twentieth of one per cent. was authorized with a view to give to them additional credit, to make them more salable.

"It is incredible that the legislature intended to deny to the purchasers of the bonds any right to look for payment beyond such meagre provision.

"We cannot think the legislature proposed rendering the bonds unsalable or almost worthless in the hands of those who might be so unfortunate as to hold them.

"Nor can we think that the legislature intended to set a trap for purchasers, and lead them to suppose they were obtaining valuable securities, when, in fact, they would obtain what was next to nothing."

The case was reversed, and remanded, with mandate to the Circuit Court, to issue the peremptory writ.

Motion for rehearing was duly made on behalf of Clark County, and supported by printed brief and argument by

other distinguished counsel, (Hon. James O. Broadhead and others,) but the motion was by this Court denied.

Upon comparison of the case at bar with the last mentioned Clark County case, they are alike in all material respects. Both relators had judgments on coupons from bonds issued under the same charter, and their alternative writs were alike. Indeed, the relator in the case at bar, *ex industria*, made his information and writ correspond to those of the Clark County case, to bring his proceeding closely under that authoritative precedent. The return of Clark County was not as full and detailed as that contained in the present record; but comparison will show that there is no substantial difference, and no new substantial legal proposition or argument is now advanced by plaintiff in error that was not ably presented and pressed upon the consideration of this Court in the motion for rehearing in the Clark County case.

The fifth case, State *ex rel.* Watkins *vs.* Walker, 68 Mo., 29, (1878,) was a preceding in mandamus, wherein the relator sought to compel the County Court of Macon County to issue him a general warrant on the Treasurer of the County for the amount of his judgment. Therein, the Supreme Court of Missouri held that the peremptory writ for such warrant was properly refused.

This was a collusive suit, designed to overthrow the decision of this Court in United States *vs.* the County of Clark, 96 U. S., 211, and confessedly to affect suits pending in the United States circuit court for the western district of Missouri, and to forestall the decisions of this Court in the cases at bar.

This is patent from the records. (See pamphlet.)

January 7, 1878, the Clark County case was decided.
January 25, 1878, information filed for mandamus in the
Macon county circuit court----------page 1
Same day, alternative writ issued---------- 3

Same day, returns made by respondents 5
Same day, demurrer to returns by relator 11
Same day, case submitted to circuit court 12
Next day, judgment rendered for respondents 12
April 10, 1878, respondents granted relator a warrant for the amount of his judgment 14
April 29, 1878, transcript filed in State supreme court 14
Same day, submission by agreement under 21st rule 14
Same day, relator's brief filed, consisting of two pages and citing only the Clark County case 15
May 13, 1878, respondents move to have case advanced, which was granted on the express grounds of pending litigation in the Federal courts against them in two cases, one of which is case No. 858 *in this Court* 18
October 30, 1878, decision of supreme court rendered. Napton, J., not sitting, and Hough, J., in part dissenting 23

Comment is unnecessary.

The sixth case, United States *ex rel.* Huidekoper *vs.* Macon County Court, 99 U. S., 582, (1878,) was a proceeding in mandamus wherein relator sought to compel the levy of a special tax adequate to pay his judgment had against Macon County on coupons from the same class of bonds, disregardant of the one-twentieth of one per cent. limitation. This was refused below, and the judgment was affirmed by this Court.

The seventh case, Macon County Court *vs.* United States *ex rel.* Huidekoper. 99 U. S., (1879,) was unmentioned in brief of plaintiff in error, a proceeding in mandamus wherein relator sought to compel the issue to him of a general warrant on the Treasurer of Macon County for the amount of his judgment.

The proceeding was instituted after the decision in the Clark County case had been rendered, and the relator's

information and alternative writ were designedly made to correspond with those sustrained in the Clark County case. Demurrer to return was sustained by the Circuit Court, and upon the express authority of the Clark County decision as a binding precedent. The case being brought here by a writ of error, it was by agreement advanced and argued, and afterwards decided by this Court, simultaneously with the sixth case, involving the same charter.

The case was argued by distinguished counsel, (Hon. Willard P. Hall and others,) and a comparison of the return then considered, and the arguments pressed on the attention of the court in its support, shows that that case was in all material respects like the case at bar. The case was affirmed by a majority of the court, a full bench having sat at the hearing, upon the authority of the Clark County case.

The case at bar, as compared with the last-mentioned case, is between the very same parties, in a similar proceeding, to effect the same end, with record, in all material respects, similar. To make the two cases alike throughout and conform to the Clark County case it only needs that this Court affirm the case and send down its mandate to the Circuit Court accordingly.

Hence it is that the defendant in error relies so confidently on United States *ex rel.* Johnson *vs.* Clark County Court, 96 U. S., 211, and Macon County Court *vs.* United States *ex rel.* Huidekoper, 99 U. S., under the maxim, *Stare decisis.*

JOSEPH SHIPPEN,
Attorney for Alfred Huidekoper,
Defendant in Error.

AN ACT

TO INCORPORATE THE MISSOURI AND MISSISSIPPI RAILROAD COMPANY.

Be it enacted by the General Assembly of the State of Missouri, as follows:

SECTION 1. A railroad company is hereby incorporated under the name and style of the Missouri and Mississippi Railroad Company, with a capital stock of FOUR MILLIONS of dollars, divided into shares of one hundred dollars each, the holders of which, their successors and assigns, shall constitute a body corporate and politic, and by the name aforesaid shall have continued succession, may sue and be sued, plead and be impleaded, defend and be defended against in all courts of record in this state and elsewhere, and shall be able in law and equity to make and enter into contracts, and become invested with the title to real and personal property, and to sell and convey the same for the purpose of constructing, using and operating said railroad; may have and use a common seal, and may make such by-laws, rules and regulations as the directors of said company may ordain and establish from time to time, for the purpose of carrying this charter into effect.

Sec. 2. That Abner L. Gilstrap, Thomas A. Eagle and Thomas Moody, of Macon county, and E. V. Wilson, S. M. Wist and William F. Plumer, of Knox county, and Erastus Sacket, James M. Crane and John H. Cox, of Clark county, shall constitute the first board of directors under this charter, and shall hold their offices until their successors are duly chosen and qualified. They shall meet at such time and place as may be designated by any three of them, giving reasonable notice thereof to the other directors, and a majority of said directors shall organize as a board, and cause books to be opened for the taking of said capital stock at such times and places as the board may direct.

SEC. 3. The said company shall have the right to take grants of real and personal property at such price or prices as the said directors, or any of them, may agree upon in

payment of stock subscribed from individuals or counties, and to take stock subscribed upon such conditions as may be determined in the by-laws.

SEC. 4. So soon as two thousand shares shall be subscribed the board shall call an election for directors, giving twenty days' notice in such newspaper or papers as the board may direct, and in like manner, unless otherwise provided in the by-laws, shall call an election of the stockholders once in every two years thereafter, and the stockholders of said company, in person or by proxy, who may assemble at the time and place for holding any such election, may proceed to select nine directors, who shall compose the board until their successors are duly elected and qualified. All such elections shall be conducted as may be provided in the by-laws.

SEC. 5. The directors shall appoint the president, agents, clerks, engineers, superintendents and other officers and servants for said company, and determine how and under what circumstances all contracts with the company shall be made and executed; shall keep a journal of their proceedings, and cause correct books and accounts to be kept; may fill all vacancies in any office of the company, and fix the salaries of the president and other officers, agents and clerks, and take bonds for the faithful performance of their duties, and do such other acts and things as may be necessary and proper, not in violation of the laws of the State of Missouri.

SEC. 6. The board of directors may order the payment of stock from time to time, giving notice thereof to the respective stockholders, as they may determine. If any stockholder fail to make his payment in pursuance of such order, the company may sue and recover the same, with interest at the rate of ten per cent., or may declare the stock forfeited if payment shall be refused for sixty days after the same should have been fully made, and forfeit also any payment or payments previously made thereon, and no such delinquent stockholder shall vote in said company.

SEC. 7. Said board of directors shall have full power and authority to survey, mark out, locate and construct a railroad *from the town of Macon, in the County of Macon, in the State of Missouri, through the town of Edina, in the County of Knox, in said State, and thence to or near the northeast corner of*

said State, in the direction of Keokuk, in Iowa, or Alexandria, Missouri, and for such purpose may obtain by grant, gift or donation, any quantity of land for the purpose of a roadbed, not exceeding one hundred feet wide, depots, warehouses, machine shops, water stations and turnouts, and may select such route as they may think best.

SEC. 8. Any such gift, grant or donation, for the purposes in the last preceding section, may be made in the usual form by the owner, or if such owner be a minor, by the guardian or contractor, approved by the probate court of the county in which the land lies.

SEC. 9. But if the owner of any such tract of land shall refuse to convey on such terms as the company may desire, or if he, she, or they shall be a minor, or unknown, of unsound mind, or a non-resident of the State, the company may file their petition in the proper county, before the Circuit Court, or the judge thereof in vacation, stating therein the facts; and it shall be the duty of said Court, or the judge thereof, to appoint three disinterested inhabitants of such county, who shall take into consideration the value of said tracts of land, and the advantages or injury of the road to the same, and report thereon, under oath, what damages, if any, will accrue thereby to said tract or tracts of land respectively, stating the amount of damages thereto, and return a plat of the lands thus condemned. Notice of such application shall be given to the owner in the same manner as summons are served, ten days prior thereto, or if upon a guardian or contractor, twenty days, or if a non-resident or unknown owner, by publication in the nearest newspaper to said lands, two insertions at least twenty days before said application.

SEC. 10. The said report, plat, and assessment shall be filed in the circuit court of the county in which any such lands may lie, and if no objection be filed thereto within the first three days of the next term thereafter, the court shall enter judgment for the amount of damages in each case, in favor of such owner and against said company, and make a decree vesting the title to the lands in question in said company; the amount of said damages shall be paid to the clerk of said court, for the use of the owner; but if objection be made to such report, or any part thereof, the court shall hear the same, overrule the objections, or if sustained, appoint three other viewers. Objections may be

filed by either party, but no second objection shall be filed, and the judgment shall be final.

SEC. 11. Said company may mortgage the roadbed, track, and rolling stock, lands and personal property, for money to be expended in the construction of said road, upon such terms as the board may determine, and may build their road along or across any county or state road, street or alley, by making or keeping in repair sufficient causeways at each crossing, for the use of the public, and in case of any tract of land being occupied shall be divided by said road, the company shall keep up each (least) one causeway for the use of the owner.

SEC. 12. *Said company shall commence the construction of said railroad within two years after they shall have obtained stock to the amount of one million of dollars, and shall complete the same within ten years thereafter. The company may extend their road from the said town of Macon, or from any other point on said road, in southwest direction to the Missouri river, or to such intermediate point as they may think proper.*

SEC. 13. IT SHALL BE LAWFUL FOR THE CORPORATE AUTHORITIES OF ANY CITY OR TOWN, THE COUNTY COURT OF ANY COUNTY DESIRING SO TO DO, TO SUBSCRIBE TO THE CAPITAL STOCK OF SAID COMPANY, AND MAY ISSUE BONDS THEREFOR, AND LEVY A TAX TO PAY THE SAME, NOT TO EXCEED ONE-TWENTIETH OF ONE PER CENT. UPON THE ASSESSED VALUE OF TAXABLE PROPERTY FOR EACH YEAR.

SEC. 14. No stockholder shall be liable for more than the amount of his stock, nor shall this charter be liable to be repeated (repealed) or annulled within the time limited for the completion of said road, nor then if the said company shall have finished their road.

This act shall take effect and be in force from and after its passage.

Approved February 20, 1865.

LAWS OF 1865, PAGE 86.

COPY OF BOND.

UNITED STATES OF AMERICA.

No. 131. Macon County Railroad Bond. Twenty years. $1,000. County of Macon, State of Missouri. $1,000.

Know all men by these presents: That the County of Macon, State of Missouri, acknowledges itself indebted to the Missouri and Mississippi Railroad Company (organized by an act of the General Assembly of the State of Missouri) or bearer, in the sum of one thousand dollars, which sum the said county promises to pay at the National Bank of Commerce, in the City of New York, on the second day of May, 1890, with interest at eight per cent. per annum, which interest shall be payable semi-annually, on presentation of the coupons hereto annexed, at the National Bank of Commerce, in the City of New York.

This bond being issued under and pursuant to orders of the County Court of Macon County, for the subscription to the stock of Missouri and Mississippi Railroad Company, as authorized by an act of the General Assembly of the State of Missouri, entitled: "An act to incorporate the Missouri and Mississippi Railroad Company, approved February 20, 1865."

In testimony whereof, the said County of Macon has executed this bond by the presiding justice of the County Court of Macon County, under the order of said Court, signing his name hereto, and by the Clerk of said Court, under the order thereof, attesting the same and affixing the seal of said Court. This done at the City of Macon, County and State aforesaid, this second day of May, 1870.

SEAL. J. R. ALDERMAN,
Presiding Justice of the County Court of Macon County.

JOHN FARRAR, *Clerk.*

COPY OF COUPON.

No. 40. RAILROAD BOND. No. 40.

MACON, Mo., *May* 2, 1870.

The County of Macon, State of Missouri, will pay to

bearer on November 2, 1872, at the National Bank of Commerce, in the City of New York, forty dollars, being six months' interest on bond No. 11, for $1,000.

JOHN FARRAR,
County Clerk.